

Article

Japan's Practice of International Cooperation: Overcoming Territorial and Maritime Disputes in East Asia¹

Taisaku Ikeshima

Abstract

Focusing primarily on the disputes over Takeshima/Dokdo and the Senkaku Islands, this paper seeks to address how countries can cooperatively overcome territorial disputes in ways which create practical and fruitful arrangements (such as the establishment of a fishery zone in a disputed zone) while not escalating tensions or upsetting the diplomatic status quo. In conclusion, Japan's practice of international cooperation concerning the territorial disputes in East Asia demonstrates: (1) diplomatic negotiation between the parties concerned can highlight the utility of attempting to *overcome*, rather than *resolve*, territorial issues or disputes; (2) international cooperation is certainly necessary to accomplish the aim of establish and maintain joint control of maritime zones around the disputed island in question; and (3) diplomacy, political consideration, wisdom, and a sense of compromise were decisive in the negotiation of each of these agreements and arrangements.

Key words: territorial and maritime disputes, Takeshima/Dokdo, Senkaku/Diaoyudao/Tiaoyutai Islands, exclusive economic zone (EEZ), continental shelf

I. Introduction

Japan has three territorial disputes with neighbouring states: (1) with Russia over the Kuril Islands (or so-called Northern Territories), (2) with South Korea (Republic of Korea: ROK) over Takeshima/Dokdo, and (3) with China and Taiwan over the Senkaku/Diaoyudao/Tiaoyutai Islands (See **Figure 1**).² The position of the Japanese government,

which effectively occupies the Senkaku Islands, is that there is no dispute over the islands. However, whereas Japan claims its right to territorial sovereignty regarding the Kuril Islands and Takeshima/Dokdo, the powers occupying these islands (Russia and ROK, respectively) deny the validity of these claims.³

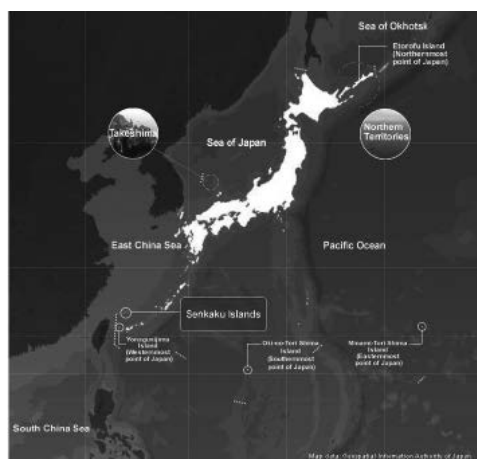


Figure 1. Japan's Territorial Disputes with Neighbouring States

(Source: Ministry of Foreign Affairs (MOFA), 'Japanese Territory' <<https://www.mofa.go.jp/territory/index.html>> (accessed 9 April 2020))

Through diplomacy,⁴ these countries successfully established a maritime order in which all parties involved can, to a certain degree, enjoy and use the disputed areas. This successful practice hints at ways that countries can pragmatically bypass, rather than settle, territorial disputes and share the fruit of subtle, cooperative arrangements.⁵

Due to space constraints, this paper focuses primarily on the disputes over Takeshima/Dokdo and the Senkaku Islands. It analyses Japan's practice of international maritime cooperation with the ROK, China, and Taiwan to establish a pragmatic, stable maritime order in the region in the face of territorial disputes.⁶ It seeks to address how countries can cooperatively overcome territorial disputes in ways which create practical and fruitful arrangements (such as the establishment of a fishery zone in a disputed zone) while not escalating tensions or upsetting the diplomatic status quo.⁷

The following analysis will show how these countries have, under these tense diplomatic circumstances, successfully created a framework for peaceful maritime relations through bilateral cooperation.

II. The 1982 United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) was adopted in 1982 and came into effect on 28 February 1996 for the ROK, 7 July 1996 for China, and 20 July 1996 for Japan.⁸ Largely speaking, UNCLOS takes a zonal and a functional approach to the regulation and control of maritime spaces. The UNCLOS introduced a wide range of conditions regarding each country's activity in its exclusive economic zone (EEZ) and the continental shelf (CS) established by the Convention.⁹

A functional approach to regulation and management utilises provisional measures and deals, flag state jurisdiction, self-restraint, and joint control by a joint committee of resources to manage these spaces. One provision of the UNCLOS prescribes the necessity of cooperation between the parties concerned regarding the delimitation of the EEZ and of the CS.¹⁰ Both Articles 74(3) and 83(3) bind signatory parties to '*a spirit of understanding and co-operation...[p]ending agreement*' (emphasis added) regarding delimitation disputes on the EEZ and/or the CS.¹¹

III. Japan-ROK Relations

On 22 June 1965 Japan and the ROK signed the Treaty of Basic Relations Between Japan and the Republic of Korea, which normalised their bilateral relationship. They also signed the Agreement on Fisheries, which entered into force on 18 December 1965 after a lengthy negotiation over the treatment of Takeshima/Dokdo due to its central position for fisheries in and around its maritime area. The main issue in this negotiation was how the countries could conclude a fishery treaty without affecting the sensitive issue of territorial sovereignty over the island. The 1965 Fisheries Agreement became a first step to promote a pragmatic way to overcome the territorial issue which has been at the centre of maritime issues between these two countries.¹²

Here, we review some specific, interesting features of the maritime arrangements in the context of bilateral maritime cooperation, whose coverage is the regulation and control of matters concerning fisheries, the continental shelf (CS), the exclusive economic zone (EEZ), and search and rescue (SAR), respectively.¹³

1. On Fisheries

Regarding the 1965 Fisheries Agreement, the following four are specific features which characterised its approach as pragmatic. First, the EEZ was established within 12 nautical miles from the baselines of each party's coast. Second, based on the principle of jurisdiction of flag state, each party may, under Articles 2 and 3 of the Agreement, take

‘provisional fishery regulatory measures’ in the Joint Regulatory Zone (JRZ), outside of which, according to Article 5, a Joint Resource Research Zone (JRRZ) may be set. Third, a Joint Fishing Committee is established to jointly manage the fishing conducted in the relevant zone by representatives of each country’s fisheries. Last, according to Article 9, each party is bound to settle disputes through diplomatic channels before going to arbitration.

2. On the Continental Shelf (CS)

To address the Continental Shelf (CS), the two countries signed a separate agreement—the Agreement between Japan and the Republic of Korea Concerning the Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries on 30 January 1974. It entered into force on 22 June 1978. This agreement adopted the median line as the demarcation line in the northern maritime space between the two parties. This achievement, temporary though, is noteworthy, because there was a disagreement between the parties concerning the method to delimit the continental shelf by the median line or in accordance with the doctrine of natural prolongation, which had been pronounced by the ICJ’s judgment of 1969 in the *North Sea Continental Shelf* cases.¹⁴

On the same date, the countries also concluded the Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries. This agreement, which came into effect on the same date as the aforementioned Agreement on the Northern Part, established a Joint Development Zone (JDZ) in the maritime area which contained the overlapping claims of both parties, and saw both parties agree to practically shelve discussion of delimitation for the 50-year duration of the agreement (See **Figure 2**).

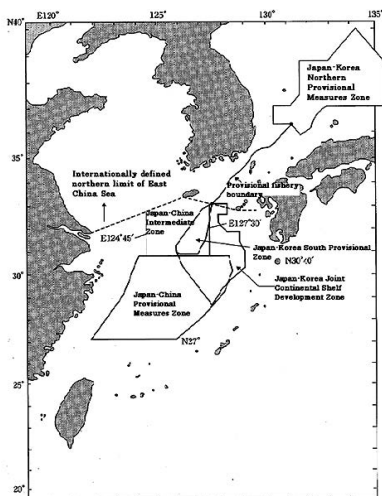


Figure 2. Relevant Maritime Zones under the Agreements between Japan and South Korea

(Source: Akiyama, Masahiro, ‘Geopolitical Considerations of the Senkaku Islands’ (originally adapted from Shimada Yukio and Hayashi Moritaka, *Kaiyo ho tekisutobukku* [A Textbook on the Law of the Sea] (Tokyo: Yushindo, 2005)), <<https://www.spf.org/islandstudies/research/a00007.html>> (accessed 9 April 2020))

3. On the Exclusive Economic Zone (EEZ)

The Fisheries Agreement of 1965 was replaced by the Agreement on Fisheries between Japan and the Republic of Korea.¹⁵ The latter agreement was signed on 28 November 1998 and entered into force on 22 January 1999, so that it would prevail over the former agreement under the newly established fishery framework of the UNCLOS. It is noteworthy that then-Japanese Foreign Minister Komura issued a statement reiterating Japan's official legal position under the 1998 Fisheries Agreement in the following two terms:¹⁶

- (1) 'The territorial issue was not shelved; it was separated'; and
- (2) '[t]his agreement may not be construed as prejudicing the legal position of either country on any international law issue (not related to fishing) including the territorial issue over Takeshima.'

The 1998 Fisheries Agreement relied on the 1974 Agreements on the CS as precedents to follow with respect to the delimitation of the relevant maritime areas. The 1998 Agreement introduced the Provisional Demarcation Line for the Exercise of Sovereign Rights over Fishing Activities (or, Provisional Demarcation Line: PDL) — a line which functioned as a *de facto* EEZ line but is not an EEZ under the UNCLOS. This PDL was the delimitation line of the Northern Part of the CS under the 1974 Northern Part Agreement. Moreover, the northern and southern 'provisional zones' were established in north and south of the PDL. Since there was no agreement on the delimitations of the EEZ, neither country can exclusively exercise sovereign rights over any fishing activities. To fill this gap in the stipulations of previous agreements, the 1998 Fisheries Agreement established a Joint Fishing Committee within these provisional zones to advise on the measures taken for conservation and management of marine living resources in the area. The 1998 Fisheries Agreement is based on the principle of reciprocity (Article 2) and a sense of cooperation not to be threatened by overexploitation (Annex I).¹⁷

This achievement was specifically mentioned positively in the 1998 Japan-republic of Korea Joint Declaration: a New Japan-Republic of Korea Partnership towards the Twenty-first Century, which acknowledges that a new bilateral fisheries agreement 'had been a major outstanding issue between the two countries'.¹⁸

4. On Search and Rescue (SAR)

It is noteworthy in terms of a functional approach to the maritime area in question that both parties successfully achieved a diplomatic goal for the issue of search and rescue without touching a sensitive issue concerning territorial sovereignty. The Agreement between Japan and the Republic of Korea on Maritime Search and Rescue (SAR) and Emergency Refuge of Vessels was signed and came into force on 25 May 1990. The Agreement aims to provide 'any person in distress at sea adjacent to the respective

countries' with emergency refuge after search and rescue. Despite its objectives and purposes, this Agreement has, without indicating the geographical scope of its application, a disclaimer on its effect on the rights and obligations of the respective parties concerning the disputed island.

IV. Sino-Japanese Relations

1. On Fisheries

After the end of the Second World War in 1945, Japan normalised its diplomatic relationship with Taiwan under the Peace Treaty between Japan and the Republic of China. This treaty was signed on 28 April 1952 and came into effect on 5 August 1952. On 29 September 1972, however, Japan changed its diplomatic relationship with Taiwan by recognising the Beijing government as the sole and legitimate government of China under the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China.

Against this background, Japan and China, which did not have diplomatic relations between World War II and 1972, chose to conclude a non-governmental arrangement between the Japan-China Fishery Council (*Nicchu Gyogyo Kyogikai* 日中漁業協議会) and the China Fishery Association (*Chugoku Gyogyo Kyokai* 中国漁業協会) Concerning Fishery in the Yellow Sea and the East China Sea. This arrangement was signed on 15 April 1955 and came into effect on 13 June 1955. Since the Chinese side did not intend to extend this arrangement, a new arrangement was signed in November 1963 and came into effect in December of the same year. This second agreement was partially revised in December 1965 and remained valid until 22 June 1974.

Due to the territorial issue of the Senkaku/Diaoyu Islands, Japan and China concluded the Agreement on Fisheries between Japan and China on 15 August 1975. This agreement came into force on 22 December 1975. It aimed to conserve and govern the reasonable use of fishery resources in the Yellow Sea and the East China Sea under flag state jurisdiction. Under this agreement, which avoided including the maritime area (which is above 27 degrees north latitude) related to the territorial issue mentioned above, a Joint Fishery Committee was established (Article 6) to jointly control and manage fisheries resources in these maritime areas.¹⁹

After the UNCLOS came into effect, Japan and China concluded the Agreement on Fisheries between Japan and the People's Republic of China of 1997. This agreement was signed on 11 November 1997 and came into effect on 1 June 2000. It replaced the previous fisheries agreement and established a Provisional Measures Zone (PMZ) in the East China Sea. Thus, without settling the huge debate over the issue of the applicable

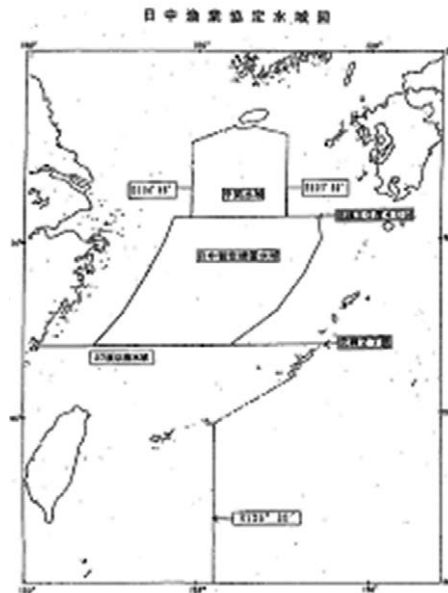


Figure 3. Relevant Maritime Zones of the 1997 Fisheries Agreement between Japan and China

(Source: Fisheries Agency, 'Kokusaitekina Shigen Kanri no Suishin ni tsuite' [Promoting International Resources Management], 13 July 2016. <<https://www.jfa.maff.go.jp/j/kikaku/attach/pdf/61kikakubukai-3.pdf>> (Accessed 9 April 2020))

principle for determining the demarcation line (i.e., either by the median line rule or the equitable principle in consideration to relevant factors), this agreement allowed both countries to continue peaceful economic activity in the East China Sea (See **Figure 3**).²⁰

The 1997 Fisheries Agreement has some specific features of interest. First, a Japan-China Joint Committee is established (Articles 3 and 11) in order to jointly control and manage fisheries resources. Second, the coastal state will exercise its sovereign rights over marine living resources in its EEZ, except for the following two cases:

- (1) The PMZ (Articles 6 and 7), where a decision of the Joint Committee prevails and where a unilateral action of either side is excluded; and
- (2) the area south of 27 degrees north latitude (where the disputed islands are located).

Second, however, it is noteworthy that the Exchange of Letters Concerning the Area Referred to in Subparagraph (b) of Article 6 of the 1997 Fisheries Agreement specifically mentions a significant point which determines how both countries can exercise their sovereign rights in the following terms:²¹

'[T]heir intentions not to apply their domestic laws concerning fishing activities

to the nationals and fishing vessels of the other country in that area with the understanding that *a cooperative relationship for the maintenance of marine living resources exists between the two countries*’ (emphasis added).

Third, the 1997 Fisheries Agreement has a disclaimer on the position of either party concerning any question related to the law of the sea, simply because Japan (whose position is that there is no territorial issue over the islands) intended only to establish a fishing order between the parties without any ‘direct relationship with the territorial title of the Islands in question’. Fourth, even though the 1997 Agreement mentions no specific dispute settlement procedures, it basically follows the spirit of the UNCLOS in that it decrees that the coastal state may exercise its sovereign rights over fishing activities and bears responsibility for the conservation and management of marine living resources.

2. On Joint Development of Oil and Gas Fields

On 18 June 2008, the ‘Japan-China Joint Press Statement: Cooperation between Japan and China in the East China Sea’ was issued. This statement prescribes both parties’ commitment to ‘cooperate *without prejudice to the legal positions* of both countries ... during *the transitional period*’ (emphasis added), though the length and meaning of this ‘period’ is not mentioned in the statement.²²

This press statement is accompanied by the following two documents: (1) the Understanding on Joint Development in the East China Sea, under which the JDZ was designated for joint exploration of natural resources therein; and (2) the Understanding on the Development of *Shirakaba* (*Chunxiao* in Chinese) Oil and Gas Field, according to which the conclusion of the text was to be done at an early stage (See **Figure 4**). Despite this achievement, unfortunately, no actual progress has so far been announced from either party yet.

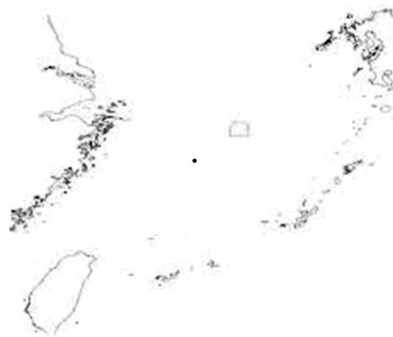


Figure 4. Relevant Maritime Area of the 2008 Joint Press Statement

(Source: MOFA, Press Statement of 2008, <<https://www.mofa.go.jp/files/000091726.pdf>> (accessed 9 April 2020))

3. On Search and Rescue (SAR)

The Agreement between Japan and the People's Republic of China on Maritime Search and Rescue (SAR) and Emergency People's Refuge of Vessels was signed on 26 October 2018 and came into force on 14 February 2019. This agreement joined a series of a bilateral SAR agreements which Japan had concluded with the ROK, Russia, and the United States by 2019. Under this agreement, Japan's Coast Guard and China's Maritime Search and Rescue Centre are responsible for providing emergency refuge to vessels 'irrespective of their nationality, status,' (Article 2) and so forth. The Agreement is also accompanied by a disclaimer; it is '[n]ot prejudice to the present and future claim and legal opinion of the parties' (Article 5 (2)).

4. On Maritime and Aerial Communication

On 9 May 2018, Japanese and Chinese defence authorities signed a memorandum on maritime and aerial communication. This memorandum aimed to promote mutual understanding and confidence, avert accidental clashes at sea and in the air, and prevent escalation of tensions. Arrangements are reportedly being made under way to open a hotline between the two countries' defence officials. Although memorandum does not specify that it covers a given geographical area, it apparently intends to cover the maritime areas surrounding and adjacent to the islands in question. We can infer this from the Japanese Prime Minister's statement that 'The East China Sea will become a sea of peace, cooperation, and friendship'.²³

V. Japan-Taiwanese Relations

1. On Fisheries

After a dispute over the Senkaku/Diaoyu/Tiaoyutai Islands, severe conflict threatened the maritime order shared by Japan and Taiwan. In this light, the countries chose to sign the non-governmental Arrangement between the Interchange Association (*Koeki zaidan hojin koryu kyokai* 公益財団法人交流協会) and the Association of East Asian Relations (*Ato kankei kyokai* 亜東関係協会) Concerning the Creation of Fishery Order on 10 April 2013, which came into effect on the same day.²⁴

This Arrangement outlines the reasonable use of marine living resources in the EEZs and the maintenance of fishery order in the relevant maritime areas with the designation of an 'exemption zone' (*horei tekiyo jogai suiiki* 法令適用除外水域), where neither party applies its own laws on fishery to the other party, and a 'special cooperation zone' (*tokubetsu kyoryoku suiiki* 特別協力水域), where the conservation and reasonable use of marine living resources and the maintenance of fishery order are specially required to be established

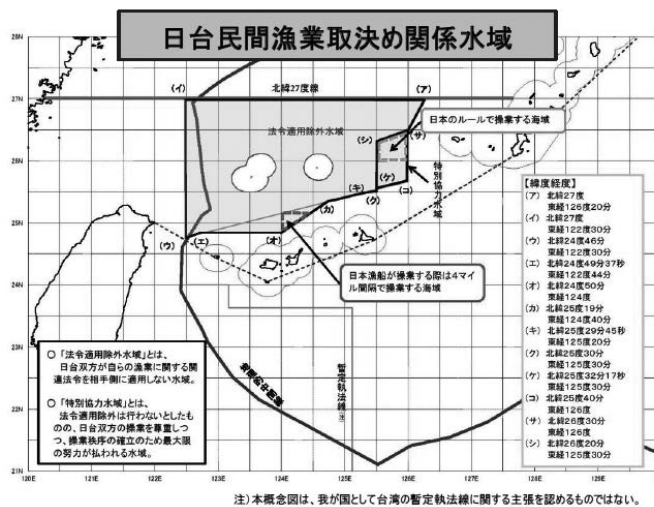


Figure 5. The Relevant Maritime Zones of the Non-Governmental Fisheries Arrangement between Japan and Taiwan

(Source: First and Second China and Mongolia Divisions, Ministry of Foreign Affairs, 'Saikin no Nittai Kankei to Taiwan Josei' [The Recent Relations between Japan and Taiwan and State of Affairs in Taiwan], April 2014, <<https://www.mofa.go.jp/mofaj/area/taiwan/pdfs/kankei.pdf>> (accessed 9 April 2020))

(See Figure 5). This arrangement also founded a Fishery Committee to serve as a forum for discussions between Japanese and Taiwanese members concerning operational rules and measures, in order to protect and manage fishery resources and avoid any threat of overexploitation.²⁵

Article 4 of this arrangement contains a disclaimer on the territorial issue. It refers to the character of the Arrangement without prejudice to the position of authorities of either party concerning issues on the law of the sea. However, it has been reported that Japanese fishermen engaged in the relevant maritime areas are actually concerned about the adversarial impacts of this arrangement on their own interests due to the concession made by the Japanese side.²⁶

VI. Conclusions

This paper has identified the following five points in common between Japan's efforts to jointly and diplomatically create maritime orders on multiple contested fronts which do not affect any party's position regarding these territorial and maritime disputes (See Figure 6).

Figure 6. Summary Table of the Discussions above (Made by the author)

	J - South Korea (ROK)	J - China	(J - Taiwan)
Fisheries/Exclusive Economic Zone (EEZ)	1965 Agreement 1998 Agreement	1955/63/65 Non-Governmental Arrangements 1975 Agreement 1997 Agreement	2013 Non-Governmental Arrangement
Continental Shelf (CS)	1974 Agreements (on the North & the South parts, respectively)	(2008 Press Statement (pending))	---
Search and Rescue (SAR)	1990 Agreement	2018 Agreement	---
Maritime & Aerial Communication Mechanism		2018 Memorandum	---
Disputed Islands	Dokdo / Takeshima	The Senkaku / Diaoyudao	The Senkaku / Tiaoyutai

First, no agreement is made on the delimitation of the maritime areas in question. Second, the introduction of a PMZ and/or a provisional line in the areas in question. Third, the establishment of a Joint Committee to manage and control the areas in question. Fourth, cooperation between the parties concerned. Fifth and finally, the utilisation of a non-governmental arrangement, if necessary. It can be said that the use of these elements in combination demonstrates the pragmatic approach taken by the concerned parties, each of whom wishes to continue using the contested areas without engaging or forcefully resolving the tensions over these areas.

It would be too early now to conclude that this practice in this region can be construed as a result of historically, culturally, and/or geopolitically common sense. In conclusion, however, this paper makes the following three comments.

First, the above-mentioned analysis illustrates the utility of attempting to *overcome*, rather than *resolve*, territorial issues or disputes. These disputes are difficult, if not impossible, to totally resolve; therefore, these countries sought to shelve or bypass territorial disputes in order to engage in friendly and mutually beneficial relations. In the cases mentioned above, each party shelved or separated the issues of territorial sovereignty and maritime delimitation in favour of pursuing peaceful and amicable relations. An institutionally key element is the use of joint control and management of the area and resources in question by a Joint Committee under the spirit of self-restraint and cooperation.

Second, international cooperation is certainly necessary to accomplish the aim of establish and maintain joint control of maritime zones around the disputed island in question. The objectives and purposes of the UNCLOS suggest that provisional arrangements

may be used pending a final solution in a spirit of understanding and cooperation between the parties concerned. This cooperation may be global under the UNCLOS, and regional or bilateral (or, as the case may be, multi-lateral) in accordance with the relevant circumstances.

Third, diplomacy, political consideration, wisdom, and a sense of compromise were decisive in the negotiation of each of these agreements and arrangements. These elements need to be present among governments, law makers, and nationals in brokering of these arrangements. It is of interest, therefore, that one of the most essential things against the backdrop of each case is, in the long run, a timing in a certain favourable environment, which will be normally realised by the parties concerned retrospectively.

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Endnotes

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- 2 See, for example, Ikeshima, 2014; Ikeshima, Fall 2017; Schoenbaum; Van Dyke.
- 3 Japanese Ministry of Foreign Affairs (MOFA), 'Japanese Territory', at <https://www.mofa.go.jp/territory/page1we_000007.html> (accessed 9 April 2020).
- 4 See Kanehara and Arima; Togo.
- 5 Fisheries Agency
- 6 See Fukuhara; Hamada; Kataoka.
- 7 For example, Japan, China and the ROK have maintained for about two decades a trilateral framework for cooperation to exchange views through diplomatic regular consultation. See MOFA, 'Japan-China-ROK Trilateral Cooperation', at <<https://www.mofa.go.jp/region/asia-paci/jck/index.html>> (accessed 9 April 2020).
- 8 See the United Nations' official home page (Division for Ocean Affairs and the Law of the Sea) on the law of the sea at <<https://www.un.org/Depts/los/index.htm>> (accessed 9 April 2020).
- 9 See Churchill and Lowe, pp. 18-24; Rothwell and Stephens, pp. 14-20; and Sohn et al, pp. 3-11.
- 10 See Miyoshi, pp. 166-171.
- 11 Both Article 74 (Delimitation of the exclusive economic zone between States with opposite or adjacent coasts), paragraph 3, and Article 83 (Delimitation of the continental shelf between States with opposite or adjacent coasts), paragraph 3, reads as follows:
'Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation.'
- 12 See, for example, Kanehara, p. 83; Kanehara and Arima, p. 30.
- 13 See Miyoshi, p. 185.
- 14 See the *North Sea Continental Shelf* cases, *ICJ Reports* 1969.
- 15 See Fukuhara, pp. 70-72; Hamada, pp. 149-150.
- 16 See Kanehara and Arima, p. 10.
- 17 See Kanehara; Kanehara and Arima; Kataoka, p. 700.
- 18 MOFA, 'Japan-Republic of Korea Joint Declaration: a New Japan-Republic of Korea Partnership towards the Twenty-first Century', 8 October 1988, paragraph 8, at <<https://www.mofa.go.jp/region/asia-paci/korea/joint9810.html>> (accessed 9 April 2020).
- 19 See Ishihara, pp. 27-29; Miyoshi, p. 186.
- 20 See Akiyama.
- 21 Ikeshima, 2014, pp. 61-62.
- 22 See, for example, Akiyama; Nishimura (though this was published before the press statement was issued).
- 23 See Kyodo News.
- 24 See Ishihara, p. 33; First and Second China and Mongolia Divisions, Ministry of Foreign Affairs.
- 25 Ishihara, pp. 33-34.
- 26 See Fukuhara, p. 75; Ikeshima, 2014, p. 60; Okinawa Times 'Senkaku' Reporters, pp. 36-59; Ryukyu Shinpo & San-in Chuo Shinpo, pp. 168-170.